

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH GEOGHEGAN, et al.

Plaintiff(s),

No. C 12-2896 PJH

V.

ORDER GRANTING MOTION TO DISMISS WITH LEAVE TO AMEND

MONESSEN HEARTH SYSTEMS, et al.

Defendant(s).

11 Defendants' motion to dismiss plaintiffs' complaint came on for hearing before this
12 court on February 27, 2013. Plaintiffs Joseph Geoghegan (individually and as father and
13 next friend of Declan Geoghegan) and Tara Geoghegan did not appear at the hearing.
14 Defendants CFM Majestic U.S. Holdings, Inc. and CFM U.S. Corp. ("defendants") appeared
15 through their counsel, Dana Ulise. Having read the papers filed in conjunction with the
16 motion and carefully considered the arguments and the relevant legal authority, and good
17 cause appearing, the court hereby GRANTS defendant's motion, for the reasons stated at
18 the hearing, and summarized as follows.

19 In their opposition brief, plaintiffs concede that their individual claims are time-
20 barred, and state their intention to proceed only as to the claims brought on behalf of
21 Declan Geoghegan. Thus, defendants' motion to dismiss plaintiffs' individual claims is
22 GRANTED, and those claims are dismissed with prejudice.

23 Defendants also move to dismiss plaintiffs' claim for punitive damages. Defendants
24 argue that, in order to pursue a punitive damages claim against a corporate entity, plaintiffs
25 must allege that fraud, oppression, or malice was undertaken, authorized, or ratified by an
26 officer, director, or manager of defendants. The court finds that plaintiffs have not so
27 alleged, and therefore GRANTS defendants' motion to dismiss. However, to the extent that
28 defendants seek dismissal with prejudice, their motion is DENIED. Plaintiffs shall have

1 an opportunity to amend the complaint to allege facts sufficient to establish a claim for
2 punitive damages. Plaintiffs shall have until **March 22, 2013** to file an amended complaint
3 in accordance with this order. No new claims or parties may be added without leave of
4 court or the stipulation of all parties. Defendants' response is due no later than 21 days
5 after plaintiffs' amended complaint is filed.

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7 **IT IS SO ORDERED.**

8 Dated: March 1, 2013

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PHYLLIS J. HAMILTON
United States District Judge